

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEVERSINK GENERAL STORE and BRENDA
TOMLINSON, *individually and on behalf of all
others similarly situated*,

Plaintiffs,

-v-

MOWI USA, LLC, MOWI DUCKTRAP, LLC,
MOWI USA HOLDING, LLC, and MOWI ASA,


Defendants.

20 Civ. 9293 (PAE)

ORDER

The Court, by separate order, has preliminarily approved the parties' class settlement and scheduled a final-approval hearing for Friday, November 19, 2021 at 2:00 p.m. At that hearing, the Court expects to inquire, *inter alia*, as to the parties' agreement that defendants will make certain "business practice changes," including refraining from using the phrases "sustainably sourced," "all natural," and "Naturally Smoked Salmon FROM MAINE." *See* Dkt. 67-1, Ex. A ("Agreement") ¶ 3.5. That provision replaces a term in the parties' initial agreement that contemplated the Court's issuance of a class-wide injunction requiring the same, which the Court likely could not have enforced under recent Circuit precedent. *See* Dkt. 65 at 1–2 (citing *Berni v. Barilla S.p.A.*, 964 F.3d 141, 149 (2d Cir. 2020)). Given the absence of an injunctive class in this action, the Court expects to discuss with counsel, at the final-approval hearing, how this term is likely to be enforced, including who may enforce it and what consequences, if any, attach to its breach.

SO ORDERED.


PAUL A. ENGELMAYER
United States District Judge

Dated: May 13, 2021
New York, New York